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International Court of Justice

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Official transcript of the International Military Tribunal, in the matter of: The United States of America, The French Republic, The United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering, et al, Defendants, sitting at Nürnberg, Germany, on 28 November 1945, 1000-1230, Lord Justice Lawrence, presiding.

THE PRESIDENT: I call upon Counsel for the United States.

Mr. SIDNEY ALDERMAN: May it please the Tribunal, at this point we distribute document book lettered "N", which will cover the next phase of the case as it will be presented. Of the five large phases of aggressive warfare, which I undertake to present to the Tribunal, I have now completed the presentation of the documents on the first phase, the phase lasting from 1933 to 1936, consisting of the preparation for aggression.

The second large phase of the program of the conspirators for aggression lasted from, approximately, 1936 to March 1939, when they had completed the absorption of Austria and the occupation of all of Czechoslovakia. I again invite the Court's attention to the chart on the wall, at which you may be interested in glancing from time to time as the presentation progresses.

The relevant portions of the indictment to the present subject are set forth in Sub-section 3, under Section IV (f), appearing at Pages 7 and 8 of the printed English text. This portion of the indictment is divided into three parts: First, the 1936 to 1938 phase of the plan, planning for the assault on Austria and Czechoslovakia; second, the execution of the plan to invade Austria, November 1937 to March 1938; third, the execution of the plan to invade Czechoslovakia, April 1938 to March 1939.

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As I previously indicated to the Tribunal, the portion of the indictment headed "(a) Planning for the assault on Austria and Czechoslovakia" is proved for the most part by Document No. 386-PS, which I introduced on Monday as Exhibit U.S.A. 25. That was one of the handful of documents with which I began my presentation of this part of the case. The minutes taken by Colonel Hoszbach of the meeting in the Reich Chancellory on 5 November 1937, when Hitler developed his political last will and testament, reviewed the desire of the Nazi Germany for more room in central Europe and made preparations for the conquest of Austria and Czechoslovakia as a means of strengthening Germany for the general pattern of the Nazi conspirators for aggression.

I shall present the materials on this second, or Austrian phase of aggression, in two separate parts. I shall first present the materials and documents relating to the aggression against Austria. They have been gathered together in the document book, which has just been distributed. Later I shall present the materials relating to the aggression against Czechoslovakia. They will be gathered in a separate document book. First, the events leading up to the autumn of 1937, and the strategic position of the National Socialists in Austria. I suggest at this point, if the Tribunal please, that in this phase we see the first full flowering of what has come to be known as "fifth column" infiltration techniques in other countries; and first under that, the National Socialist aim of absorption of Austria.

In order to understand more clearly how the Nazi conspirators proceeded, after the meeting of 5 November 1937, covered by the Hoszbach minutes, it is advisable to review

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the steps, which had already been taken in Austria by the Nazi Socialists of both Germany and Austria. The position, which the Nazis had reached by the Fall of 1937 made it possible for them to complete their absorption of Austria much sooner and with much less cost than had been contemplated at the time of the meeting, covered by the Hoszbach minutes.

The acquisition of Austria had long been a central aim of the German National Socialists. On the first page of "Mein Kampf", Hitler said, "German Austria must return to the Great German Motherland," and he continued by stating that this purpose of having common blood in a common Reich could not be satisfied by a mere economic union. Moreover, this aim of absorption of Austria was an aim from 1933 on and was regarded as a serious program, which the Nazis were determined to carry out.

At this point, I should like to offer in evidence our document No. 1760-PS, which, if admitted, would be Exhibit U.S.A. 57. This document is an affidavit executed in Mexico City on 28 August of this year by George S. Messerschmidt, United States Ambassador, now in Mexico City. Before I quote from, or a part of Mr. Messerschmidt's affidavit, I should like to point out briefly that Mr. Messerschmidt was Consul General of the United States of America in Berlin from 1930 to the late Spring of 1934. He was then made American Minister in Vienna where he stayed until 1937.

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In this affidavit he states that the nature of his work brought him into frequent contact with German Government officials, and he reports in this affidavit that the Nazi Government officials, with whom he had contact, were on most occasions amazingly frank in their conversation and made no concealment of their aims.

If the Court please, this affidavit, which is quite long, presents a somewhat novel problem of treatment in the presentation of this case. In lieu of reading this entire affidavit into the record, I should like, if it might be done in that way, to offer it in evidence, not merely the English original of the affidavit, but also a translation into German, which has been mimeographed.

THE PRESIDENT: Mr. Alderman, some of the Tribunal's documents are not marked with the "PS" number, which makes it very difficult to find. I wonder whether you have a copy of the book, which is numbered.

MR. ALDERMAN: If we could borrow the set that isn't numbered, we will number it.

This translation of the affidavit into German, has been distributed to Counsel for the Defendants.

DR. KUBUSCHOK (Defense Counsel): I am the attorney for the Defendant von Papen. An affidavit has just been turned over to the Court, an affidavit of a witness, who is obtainable. The content of the affidavit contains so many subjective opinions of the witness, it seems possible to hear the witness personally in this matter.

I should like to take this occasion to ask for a decision, as a matter of principle, whether, that which a witness can present by his presence, may instead be presented in the form of an affidavit; in other words, a witness who can be reached, should be brought in instead of an affidavit.

MR. ALDERMAN: May I be heard?

THE PRESIDENT: You have finished what you wanted to say?

DR. KUBUSCHOK: Yes.

THE PRESIDENT: Very well, We will hear Mr. Alderman.

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MR. ALDERMAN: May it please the Tribunal, I recognize, of course, the inherent weakness of an affidavit as evidence where the witness is not present subject to cross examination. Mr. Messerschmidt is an elderly gentleman. He is not in good health. It was entirely impracticable to try to bring him here; otherwise, we should have done so.

I remind the Court of Article 19 of the Charter:

"The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and non-technical procedure, and shall admit any evidence, which it deems to have probative value."

Of course, the Court would not treat anything in an affidavit such as this as having probative value unless the Court deemed it to have probative value; and if the Defendants have countering evidence, which is strong enough to overcome whatever is probative in this affidavit, of course, the Court will treat the probative value of evidence in accordance with this provision of the Charter.

By and large, this affidavit and another affidavit by Mr. Messerschmidt, which we shall undertake to present, covers background material, which is a matter of historical knowledge, of which the Court could take judicial knowledge. Where he does quote these amazingly frank expressions by Nazi leaders, it is entirely open to any of them, who may be quoted, to challenge what is said, or to tell your Honors what they conceive as what they said. In any event, it seems to me that the Court can accept an affidavit of this character, made by a well known American diplomat, and give it whatever probative value it seems to have to the Court.

On the question of reading the whole thing, the whole affidavit, I understand the ruling of the Court, that only those parts of documents, which are quoted into the record, will be considered in the record, to have been based upon the necessity of giving the German Counsel knowledge of what was being used. As to these affidavits, we have furnished them complete German translations so that it seems to us that a different rule might obtain where that has been done.

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THE PRESIDENT: Mr. Alderman, have you finished with what you have to say?

MR. ALDERMAN: Yes.

DR. KUBUSCHOK: The representative of the Prosecution, takes the point of view that the age and state of health of the witness makes it impossible to summon him as a witness. I do not know

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the witness personally, and consequently am not in a position to state to what extent he is actually incapacitated. Nevertheless, I have profound doubts regarding the presentation of such evidence of such an old and incapacitated person. I am speaking now not about Mr. Messersmith . but I should like to open the question to what extent the state of health of a witness determines whether or not a person can be heard by this Court.

It is important to know what questions, in toto, were put to the witness, since an affidavit only reiterates the answers to the questions which were put to the person. Very often conclusions can be drawn from questions, which were not in fact put to the witness. It is here a question of evidence on the basis of an affidavit and for that reason we are not in a position to assume, with absolute certainty, that the evidence of the witness is complete.

I am not of the opinion of the Prosecution that in this case there are being introduced two pieces of evidence of different value; namely, on the one hand the evidence of a witness and on the other hand the evidence as laid down in an affidavit. The situation is rather this: That either the evidence is sufficient, or it is not. I think the Tribunal should confine itself to complete evidence.

MR. ALDERMAN: May it please the Tribunal, I want--

THE PRESIDENT: Just a moment.

MR. ALDERMAN: Yes.

THE PRESIDENT: Yes, Mr. Alderman, did you wish to add anything?

MR. ALDERMAN: I wish to make this correction, perhaps, of what I had said. I did not mean to leave the implication that Mr. Messersmith.. is in any way incapacitated. He is an elderly man, about 70 years old. He is on active duty in Mexico City, and the main difficulty is that we didn't feel that we could take him away from his duties in that post combined with a long trip at his age.

THE PRESIDENT: That's all, is it?

MR. ALDERMAN: Yes.

THE PRESIDENT: The Tribunal have considered the objection which has

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been raised, and in view of the powers which the Tribunal has under Article 19 of the Charter, which provides that the Tribunal shall not be bound by technical rules of evidence, but shall adopt and apply to the greatest possible extent expeditious and non-technical procedure and shall admit any evidence which it deems to have probative value. In view of those provisions, the Tribunal holds that affidavits can be presented, and that in the present case it is a proper course. The question of the probative value of an affidavit as compared with a witness who has been cross-examined would of course be considered by the Tribunal; and if at a later stage, the Tribunal thinks the presence of a witness is of extreme importance, the matter can be reconsidered. And they would add this: That if the defense wish to put interrogatories to the witness, they will be at liberty to do so.

MR. ALDERMAN: I offer then our document 1760-PS as Exhibit USA 57, affidavit by George S. Messersmith; and rather than reading the entire affidavit, unless the court wish me to do so, I had intended to paraphrase the substance of what it covers at various parts of the affidavit.

THE PRESIDENT: The Tribunal thinks it would be better and that you must adhere to the rule which we have laid down, that only what is read in the court will form part of the record.

MR. ALDERMAN: I shall read then, if this Tribunal please, on the third page of the English mimeograph; to identify it, it is the fourth paragraph following the list of names, starting with President Miklas of Austria and Chancellor Dollfuss:

"From the very beginnings of the Nazi Government, I was told by both high and secondary Government officials in Germany--"

THE PRESIDENT: Will you tell us again which page you are on?

MR. ALDERMAN: Page 3 of the English version, the fourth paragraph below the list of names. There are two Messerschmidt affidavits and counsel confuses between the two, I think.

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"From the very beginnings of the Nazi Government, I was told by both high and secondary Government officials in Germany that incorporation of Austria into Germany was a political and economic necessity and that this incorporation was going to be accomplished 'by whatever means were necessary.' Although I cannot assign definite times and places, I am sure that at various times and places, every one of the German officials whom I have listed earlier in this statement told me this, with the exception of

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Schacht, von Krosigk and Krupp von Bohlen. I can assert that it was fully understood by everyone in Germany who had any knowledge whatever of what was going on that Hitler and the Nazi Government were irrevocably committed to this end, and the only doubt which ever existed in conversations or statements to me was how and when."

And in connection with that paragraph, I invite your attention to the list of German officials to whom he refers on page 2 of the affidavit; and they are listed as Hermann Goering, General Milch, Hjalmar Schacht, Hans Frank, Wilhelm Frick, Count Schwerin von Krosigk, Joseph Goebbels, Richard Walter Darre', Robert Ley, Hans Heinrich Lammers, Otto Meissner, Franz von Papen, Walther Funk, General Wilhelm Keitel, Admiral Eric von Raeder, Admiral Karl Doenitz, Dr. Bohle, Dr. Stuckert, Dr. Krupp von Bohlen, Dr. Davidson. Now, the statement was that he was sure that at various times and places, everyone of those listed German officials had made these statements to him with the exception of Schacht, von Krosigk, and Krupp von Bohlen. Continuing with the next paragraph:

"At the beginningsof the Nazi regime in 1933, Germany was, of course, far too weak to permit any open threats of force against any country, such as the threats which the Nazis made in 1938. Instead it was the avowed and declared policy of the Nazi Government to accomplish the same results which they later accomplished through force through the methods which had proved so successful for them in Germany: Obtain a foothold in the Cabinet, particularly in the Ministry of the Interior, which controlled the police, and then quickly eliminate the opposition elements. During my stay in Austria, I was told on any number of occasions by Chancellor Dollfuss, Chancellor Schuschnigg, President Miklas, and other high officials of the Austrian Government that the German Government kept up constant and unceasing pressure upon the Austrian Government to agree to the inclusion of a number of ministers with Nazi orientation. The English and French ministers in Vienna, with whom I was in constant and close contact confirmed this information through statements which they made to me of conversations which they had with high Austrian officials."

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I shall read other portions of the affidavit as the presentation proceeds. On this question of pressure used against Austria, including terror and intimidation, culminating in the unsuccessful putsch of July 26, 1934, to achieve their ends the Nazis used various kinds of pressure. In the first place, they used economic pressures. A law of 24 March 1933, German law, imposed a prohibitive 1,000 Reichsmark penalty on trips to Austria and brought great hardship to this country, which relied very heavily on its tourist trade. For that I cite the Reichsgesetzblatt, 1933, Roman I, page 311, and ask the court to take judicial notice of that German law.

The Nazis used propaganda and they used terroristic acts, primarily bombings. Mr. Messersmith's affidavit, Document 1760-PS, from which I have already read, goes into some detail with respect to these outrages, I read again from page 4 of the affidavit, the English version, the second paragraph on the page:

"The outrages were an almost constant occurrence, but there were three distinct periods during which they rose to a peak.

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During the first two of these periods, in mid 1933 and in early 1934, I was still in Berlin. However, during that period I was told by high Nazi officials in conversation with them that these waves of terror were being instigated and directed by them. I found no concealment in my conversations with high Nazi officials of the fact that they were responsible for these activities in Austria. These admissions were entirely consistent with the Nazi thesis that terror is necessary and must be used to impose the will of the Party not only in Germany but in other countries. I recall specifically that General Milch was one of those who spoke frankly that these outrages in Austria were being directed by the Nazi Party and expressed his concern with respect thereto and his disagreement with this definite policy of the Party."

And the next paragraph:

"During the wave of terroristic acts in May and June 1934, I had already assumed my duties as American Minister in Vienna. The bomb outrages during this period were directly primarily at railways, tourist centers, and the Catholic Church, which latter, in the eyes of the Nazis, was one of the strongest organizations opposing them. I recall, however that these outrages diminished markedly for a few days during the meeting of Hitler and Mussolini in Venice in mid-June 1934. At that time Mussolini was strongly supporting the Austrian Government and was strongly and deeply interested in maintaining Austrian independence and sovreignty and in keeping down Nazi influence and activity in Austria. At that time also Hitler could not afford an open break with Mussolini and undoubtedly agreed to the short cessation of these bomb outrages on the insistence of Mussolini because

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he, Hitler, wished to achieve as favorable an atmosphere for the meeting between him and Mussolini as possible. The cessation of the bomb outrages during the Hitler-Mussolini conversations was considered by me and by the Austrian authorities and by all observers at that time as an open admission on the part of Hitler and the German Government that the outrages were systematically and completely instigated and controlled from Germany."

Then turning to page 7 of the English version, following the line which reads, "Official dispatch from Vienna dated July 26, 1934, a short line, I quote the following paragraph:

"In addition to these outrages, the Nazis attempted to bring pressure upon Austria by means of the 'Austrian Legion.' This organization, a para-military force of several thousand men, was stationed near the Austrian border in Germany as a constant and direct threat of violent action against Austria. It was without any question sanctioned by the Nazi Government of Germany as it could otherwise not have existed, and it was armed by them. It was made up of Austrian Nazis who had fled from Austria after committing various crimes in Austria and by Austrians in Germany who were attracted by the idle life and pay given by the German authorities."

These terroristic activities of the Nazis in Austria continued until July 25, 1934. It is a well-known historical fact of which I ask the court to take judicial notice, that on that day members of the NSDAP of the Nazi Party attempted a revolutionary putsch in Austria and killed Chancellor Dollfuss.

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At this point I should like to invite your attention to the fact that the indictment alleges in Count IV, Crimes Against Humanity, paragraph B on page 26 of the English printed text, that the Nazis murdered amongst others Chancellor Dollfuss. I do not have available an official authenticated account of the details of that putsch, but I think it will suffice if I briefly recall to the court what is after all a well-known matter of history. On July 25, 1934, about noon, 100 men dressed in the uniform of the Austrian army attacked the federal chancellery. Chancellor Dollfuss was wounded in trying to escape, being shot twice at close quarters. The Radio Vienna in the center of the town was overwhelmed, and the announcer was compelled to broadcast the news that Dollfuss had resigned and that Dr. Rintelen had taken his place as chancellor. Although the putsch failed, the insurgents kept control of the chancellery building and agreed to give it up only after they had a safe conduct to the German border. The insurgents contacted the German Minister Dr. Reith by telephone and subsequently had private negotiations with him in the building. At about 7 p.m. they yielded the building, but Chancellor Dollfuss breathed his last about 6 p.m. not having had the services of a doctor.

It is also a well-known historical fact that the German government denied all complicity in this putsch and in this assassination. Hitler removed Dr. Reith as minister on the ground that he had offered a safe conduct to the rebels without making inquiry of the German government and had thus without reason dragged the German Reich into an internal Austrian affair in public sight.

This statement appears in a letter which Hitler sent to the defendant Papen on the 26th day of July 1934. I shall offer that letter a little later.

Although the German government denied any knowledge or complicity in this putsch, we think there is ample basis for the conclusion that the German Nazis bear responsibility for these events. It is not my purpose with respect to this somewhat minor question to review the expansive record in the trial of the Austrian Nazi Planetta and others who were convicted for the murder of Dollfuss. Similarly I have no intention of showing to the

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court the contents of the Austrian Braunbuch, issued after July 25, without which the court will, I think, take judicial notice.

I should like instead to mention a few brief items which seem to us sufficient for the purpose. I quote again from our Exhibit No.1760-PS, from the Messersmith affidavit, U.S.57, on page 7, the paragraph in the middle of the page:

"The events of the putsch of July 25, 1934, are too well known for me to repeat them in this statement. I need say here only that there can be no doubt that the putsch was ordered and organized by the Nazi officials from Germany through their organization in Austria made up of German Nazis and Austrian Nazis. Dr. Rieth, the German Minister in Vienna, was fully familiar with all that was going to happen and that was being planned. The German Legation was located directly across the street from the British Legation, and the Austrian secret police kept close watch on the persons who entered the German Legation. The British had their own secret service in Vienna at the time, and they also kept a discreet surveillance over people entering the German Legation. I was told by both British and Austrian offic als that a number of the men who were later found guilty by the Austrian courts of having been implicated in the putsch had frequented the German Legation. In addition, I personally followed very closely the activities of Dr. Rieth, and I never doubted on the basis of all my information that Dr. Rieth was in close touch and constant touch with the Nazi agents in Austria, these agents being both German and Austrian. Dr. Rieth could not have been unfamiliar with the putsch and the details in connection therewith. I recall too very definitely from my conversations with the highest officials of the Austrian Government after the putsch their informing me that Dr. Reith had been in touch with von Rintelen, who it had been planned by the Nazis was to succeed Chancellor Dollfuss had the putsch been successful.

"It may be that Dr. Rieth was himself not personally sympathetic with the plans for the putsch, but there is no question that he was fully familiar with all these plans and must have given his assent thereto and connived therein.

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"As this putsch was so important and was a definite attempt to overthrow the Austrian government and resulted in the murder of the Chancellor of Austria, I took occasion to verify at the time for myself various other items of evidence indicating that the putsch was not only made with the knowledge of the German government but engineered by it. I found and verified that almost a month before the putsch Goebbels told Signor Cerruti, the Italian Ambassador in Berlin, that there would be a Nazi government in Vienna in a month".

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I should also like to offer in evidence Ambassador Dodd's diary, 1933-1938, a book published in 1941, our document 2832 PS, and particularly the entry for July 26, 1934. We have the book with the page to which I have reference, two pages. I should like to offer that portion of the book in evidence as Exhibit USA 58, further identified as our document 2832 PS.

Mr. Dodd, then Ambassador to Berlin, made the following observations in that entry. First he noticed that in February 1934 Ernst Hanfstaengl advised Mr. Dodd that he brought what was virtually an order from Mussolini to Hitler to leave Austria alone and to dismiss and silence Theodor Habicht the German agent in Munich, who had been agitating for annexation of Austria. On June 19th in Venice Hitler was reported to have got Mussolini to leave Austria alone. Mr. Dodd further states, and I quote from his entry of July 26, 1934: "On Monday, July 23, after repeated bombings in Austria by Nazis, a boat loaded with explosives was seized on Lake Constance by the Swiss police. It was a shipment of German bombs and shells to Austria from some arms plant. That looks ominous to me, but events of the kind have been so common that I did not report it to Washington."

THE PRESIDENT: Mr. Alderman, we don't seem to have this document. Our document 2832 PS begins July 26, Thursday.

MR. ALDERMAN: That is right. Yes.

THE PRESIDENT: You began with Monday, did'nt you?

MR. ALDERMAN: I think you misunderstood me. I began reading at a sentence which began on Monday, July 23rd.

THE PRESIDENT: I want to know where that is.

MR. ALDERMAN: Yes, sir. It is in the third paragraph.

THE PRESIDENT: About twelve lines down.

MR. ALDERMAN: Yes, sir.

"Today evidence came to my desk that last night, as late as 11:00 o'clock, the government issued formal statements to the newspapers rejoicing at the fall of Dollfuss and proclaiming the greater Germany that must follow. The German Minister in Vienna had actually helped to form the new

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cabinet. He had, as we now know, exacted a promise that the gang of Austrian and Nazi murderers should be allowed to go into Germany undisturbed, but it was realized about 12:00 o'clock that, although Dollfuss was dead, the loyal Austrians had surrounded the government palace and prevented the organization of a new Nazi regime. They held the murderers prisoners. The German propaganda ministry therefore forbade publication of the news sent out an hour before and tried to collect all the releases that had been distributed. A copy was brought to me today by a friend.

"All the German papers this morning lamented the cruel murder and declared that it was simply an attack of discontented Austrians, not Nazis. News from Bavaria shows that thousands of Austrian Nazi living for a year in Bavaria on German support had been active for ten days before, some getting across the border contrary to law, all drilling and making ready to return to Austria. The German propagandish Habicht was still making radio speeches about the necessity of annexing the ancient realm of the Hapsburg to the Third Reich, in spite of all the promises of Hitler to silence him. But now that the drive has failed and the assassins are in prison in Vienna, the German government denounces all who say there was any support from Berlin.

I think it will be clear one day that millions of dollars and many arms have been pouring into Austria since the Spring of 1933. Once more the whole world is condemning the Hitler regime. No people in all modern history have been quite so unpopular as Nazi Germany. This stroke completes the picture. I expect to read a series of bitter denounciations in the American papers when they arrive about ten days from now".

As I stated before, the German government denied any connection with the Putsch and the murder of Dollfuss. In this connection, I should like to invite attention to the letter of appointment which Hitler wrote to the Defendant von Papen on 26 July 1934. This letter appears in a standard German reference work Dokumente der Deutschen Politik, Volume 2, at Page 83. For convenience we have identified it as Document 2799-PS, and a copy translated into English is included in the document book. The Defendants may examine the German text in the Dokumente der Deutschen

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Politik, a copy of which is present in my hand, Page 83 of Volume 2.

I ask the Court if it will take judicial notice of this original German typing.

THE PRESIDENT: Can you tell us where it occurs in our document book?

MR. ALDERMAN: It is our document 2799-PS, a letter from Adolf Hitler.

THE PRESIDENT: It appears to come opposite 2510-PS.

MR. ALDERMAN: I should like to read this letter which Chancellor Hitler sent to Vice-Chancellor von Papen. I think it will provide us with a little historical perspective and perhaps freshen our recollection of the ways in which the Nazi conspirators worked. In considering

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Hitler's letter to the Defendant von Papen on July 26th, we must bear in mind as an interesting sidelight the widespread reports at that time, and I mention this only as a widespread report, that the Defendant von Papen narrowly missed being purged on June 30, 1944, along with the Nazi Ernst Roehm, and others. The letter from Hitler to von Papen is as follows:

"Dear Mr. von Papen

"As a result of the events in Vienna I am compelled to suggest to the Reichs-President the removal of the German Minister to Vienna, Dr. Rieth, from his post, because he, at the suggestion of Austrian Federal Ministers and the Austrian rebels respectively consented to an agreement made by both these parties concerning the safe conduct and retreat of the rebels to Germany without making inquiry of the German Reich Government. Thus the Minister has dragged the German Reich into an internal Austrian affair without any reason.

"The assassination of the Austrian Federal Chancellor which was strictly condemned and regretted by the German Government has made the situation in Europe, already fluid, more acute, without any Fault of ours. Therefore, it is my desire to bring about if possible an easing of the general situation, and especially to direct the relations with the German Austrian State, which have been so strained for a long time, again into normal and friendly channels.

"For this reason, I request you, dear Mr. von Papen, to take over this important task, just because you have possessed and continue to possess my most complete and unlimited confidence ever since we have worked together in the Cabinet.

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"Therefore, I have suggested to the Reichs-President that you, upon leaving the Reich-Cabinet and upon release from the office of Commissioner for the Saar, be called on special mission to the post of the German Minister in Vienna for a limited period of time. In this position you will be directly subordinated to me.

"Thanking once more for all that you have at a time done for the coordination of the Government of the National Revolution and since then together with us for Germany, I remain,

"Yours, very sincerely,

"Adolf Hitler".

Now let us look at the situation four years later, on July 23, 1938, after the Anschluss with Austria. At that time the German officials no longer expressed regret over the death of their consultant. They were eager and willing to reveal what the world already knew, that they were identified with and sponsors of the murder of the former Chancellor.

I offer in evidence at this point Document L-273, which I offer as Exhibit USA 59. That document is a dispatch from the American Council General, Vienna, to the Secretary of State, dated July 26, 1938. Unfortunately, through a mechanical slip, this document which is in English in the original was not mimeographed in English and is not in your document book. However, it was translated into German and is in the document book which counsel for the defendants have. I read from a photostatic copy of this dispatch:

"The two high points of the celebration"--here was a celegration-- "with the memorial assembly on the 24th at Klagenfurt, capital of the Province of Corinthia, where in 1934 at Vienna Nazi revolt found its widest response and the

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march on the 25th to the former Federal Chancellery in Vienna by the surviving members of the SS Standarte 89, which made th attack on the Chancellery in 1934", a reconstruction of the crime, so to say. "The assembled thousands at Klagenfurt were addressed by the Fuehrer's Deputy, Rudolf Hess, in the presence of the families of the thirteen National Socialists who were hanged for their part in the July Putsch. The Klagenfurt memorial celebration was also made the occasion for the solemn swearing in of the seven recently appointed Gauleiters of this Ostmark. From the point of view of the outside world, this picture of Reichsminister Hess was chiefly remarkable for the fact that after devoting the first half of his speech to the expected phrase of the sacrifices of the men, women, and youth of Austria in the struggle for greater Germany, he then launched into a defense of the occupation of Austria and an attack on the lying foreign press and on those who spread the idea of a new war. 'The world was fortunate' declared Hess' that German's leader was a man who would not allow himself to be provoked. The Fuehrer ways what is necessary for his people in sovereign calm and labors for the peace of Europe', even though provocators 'completely ignoring the deliberate threat to peace of certain small states, distinctly claim that he is a menace to the peace of Europe.' The march on the former Federal Chancellery, referring back to the Putsch of four years before, now the Reichsstatthalterei, followed the exact route and time schedule of

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the original attack. The marchers were met at the Chancellery by Reichsstatthalter Seyss-Inquart, who addressed them and unveiled a memorial cabinet from the Reichsstatthalterei, the Standarte. That is the SS organization which made the original attack and which marched on this occasion four years later. From the Reichsstatthalterei the Standarte marched from the Old Reich Broadcasting Center, from which false news of the resignation of Dolfus has been broadcast, and there unveiled a second memorial tablet. Steinhausen, the present police president of Vienna, is a member of the SS Standarte 89."

Now, that original memorial plaque, if the Court please, today is rubble, like so much of Nürnberg, but we found a photograph of it in the National Library in Vienna. I should like to offer that photograph in evidence, taken on this occasion four years later, the Nazi wreath encircling the plaque, the memorial tablet, and with a large wreath of flowers with a very distinct Swastika Nazi symbol laid before the wreath. I offer that photograph in evidence, identified as our 2968-PS. I offer it as Exhibit USA 60. You will find that in the document book, and I know of no more interesting or shocking document that you could look at. We call that murder by ratification, celebrating a murder four years later.

As that photograph shows, this plaque which was erected to celebrate this sinister occasion reads: "One hundred fifty-four German men of the 89th SS Standarte stood up here for Germany on July 26, 1934. Seven found dead at the hands of the hangman." The Tribunal may notice that the number 154 at the top of the plaque is concealed in the photograph by the Nazi wreath

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surrounding the plaque. I must confess that I find myself curiously interested in this tablet and in the photograph which was taken and carefully filed. The words chosen for this marble tablet, and surely we can presume that they were words chosen carefully, tell us clearly that the men involved were not mere malcontent Austrian revolutionaries, but were regarded as German men, were members of a prior military organization, and stood up here for Germany. In 1934 Hitler repudiated Doctor Reiss because he dragged the German Reich into an internal Austrian affair without any reason. In 1938 Nazi Germany proudly identified itself with this murder, took credit for it, and took responsibility for it. Further proof in the conventional sense, it seems to us, is hardly necessary.

Next the program culminating in the act of July 11, 1936. In considering the activities of the Nazi conspirators in Austria between July 25, 1934 and November 1937, there is a distinct and immediate point, the act of July 11, 1936. Accordingly, I shall first review developments in the two year period, July 1934 to July 1936.

First, the continued aim of eliminating Austria's independence, with particular relation to the defendant von Papen's conversation and activity. The first point that should be mentioned is this. The Nazi conspirators pretended to respect the independence and sovereignty of Austria, notwithstanding the aim of Anschluss stated in Mein Kampf. But in truth and in fact they were working from the very beginning to destroy the Austrian State.

A dramatic recital of the position of defendant von Papen in this regard is provided in Mr. Messersmith's affidavit from which I have already quoted, and I quote now

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from Page 9 of the English copy, the second paragraph.

THE PRESIDENT: What is the number?

MR. ALDERMAN: 1760-PS, USA 57.

"That the policy of Anschluss remained wholly unchanged was confirmed to me by Franz von Papen when he arrived in Vienna as German Minister. It will be recalled that he accepted this assignment as German Minister even though he knew that he had been marked for execution in the St. Bartholomew's massacre on June 30, 1934. When, in accordance with protocol, he paid me a visit shortly after his arrival in Vienna, I determined that during this call there would be no reference to anything of importance, and I limited the conversation strictly to platitudes which I was able to do as he

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was calling on me in my office. I deemed it expedient to delay my return call for several weeks in order to make it clear to von Papen that I had no sympathy with and on the other hand was familiar with the objectives of his mission in Austria. When I did call on von Papen in the German Legation, he greeted me with 'Now you are in my Legation and I can control the conversation.'

"In the baldest and most cynical manner he then proceeded to tell me that all of Southeastern Europe, to the borders of Turkey, was Germany's natural hinterland, and that he had been charged with the mission of facilitating German economic and political control over all this region for Germany. He blandly and directly said that getting control of Austria was to be the first step. He definitely stated that he was in Austria to undermine and weaken the Austrian Government and from Vienna to work towards the weakening of the Governments in the other states to the South and South East. He said that he intended to use his reputation as a good Catholic to gain influence with certain Austrians, such as Cardinal Innitzer, towards that end. He said that he was telling me this because the German Government was bound on this objective of getting this control of Southeastern Europe and there was nothing which could stop it, and that our own policy and that of France and England was not realistic.

"The circumstances were such, as I was calling on him in the German Legation, that I had to listen to what he had to say, and of course I was prepared to hear what he had to say although I already knew what his instructions were. I was nevertheless shocked to have him speak so baldly to me, and when he finished I got up and told him how shocked I was to hear the accredited representative of a supposedly friendly state to Austria admit that he was proposing to engage in activities to undermine and destroy that Government to which he was accredited. He merely smiled and said, of course this conversation was between us and that he would, of course, not be talking to others so clearly about his objectives. I have gone into this detail with regard to this conversation as it is characteristic of the absolute frankness and directness with which high

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Nazi officials spoke of their objectives."

And again, reading from the same document on Page 10, beginning at the last paragraph at the bottom of the page:

"On the surface, however, German activities consisted principally of efforts to win the support of prominent and influential men through insidious efforts of all kinds, including the use of the German Diplomatic Mission in Vienna and its facilities and personnel.

"Von Papen as German Minister entertained frequently and on a lavish scale. He approached almost every member of the Austrian Cabinet, telling them, as several of them later informed me, that Germany was bound to prevail in the long run, and that they should join the winning side if they wished to enjoy positions of power and influence under German control. Of course, openly and outwardly he gave solemn assurance that Germany would respect Austrian independence and that all that she wished to do was to get rid of elements in the Austrian Government like the Chancellor, Schuschnigg and Starhemberg as head of the Heimwehr and others, and replace them by a few 'nationally-minded' Austrians, which of course meant Nazis. The whole basic effort of von Papen was to bring about Anschluss.

"In early 1935, the Austrian Foreign Minister, Berger-Waldenegg, informed me that in the course of a conversation with von Papen, the latter had remarked 'Yes, you have your French and English friends now and you can have your independence a little longer.' The Foreign Minister, of course, told me this remark in German, but the foregoing is an accurate translation. The Foreign Minister told me that he had replied to von Papen 'I am glad to have from your own lips your own opinion which agrees with what your chief has just said in the Saar and which you have taken such pains to deny.' Von

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Papen appeared to be terribly upset when he realized just what he had said and tried to cover his statements, but according to Berger-Waldenegg, kept constantly getting into deeper water.

"Von Papen undoubtedly achieved some successes, particularly with men like Glaise-Horstenau and others who had long favored the "Grossdeutschum" idea, but who nevertheless had been greatly disturbed by the fate of the Catholic Church. Without conscience or scruple, von Papen exploited his reputation and that of his wife as ardent and devout Catholics to overcome the fears of these Austrians in this respect."

May I inquire if the Court expects to take a short recess?

THE PRESIDENT: Yes. We will adjourn now for ten minutes.

(Whereupon at 11:40 a.m., a short recess was taken.)

THE PRESIDENT: The Tribunal wishes to make it clear, if I did not make it clear when I spoke before, that if defense counsel wishes to put interrogatories to Mr. Messersmith upon his affidavit they may submit such interrogatories to the Tribunal in writing for them to be sent to Mr. Messersmith to answer.

DR. KRANZBUEHLER: Defense attorney for the defendant Doenitz.

THE PRESIDENT: Yes.

DR. KRANZBUEHLER: I do not know whether my question has yet been answered or whether it has been made known to the President of the Court.

In the testimony of Mr. Messersmith, Doenitz' name was mentioned. It appears on Page 4 of the German version. I should like to read the whole paragraph:

"Admiral Karl Doenitz was not always in an amicable frame of mind. He was not a National Socialist when the National Socialists came to power"--

THE PRESIDENT: This passage was not read in evidence, was it?

DR. KRANZBUEHLER: No, only the name was mentioned.

THE PRESIDENT: I don't think the name was mentioned, because this part of the affidavit was not read.

DR. KRANZBUEHLER: The name was read, Mr. President.

THE PRESIDENT: Very well; go on.

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DR. KRANZBUEHLER: "Nevertheless, he became one of the first high officers in the Army and Fleet and was in complete agreement with the concepts and aims of National Socialism."

As an introduction to this paragraph, Mr. Messersmith said, on Page 2, the last sentence before the Number 1--

THE PRESIDENT: Which page are you on?

DR. KRANZBUEHLER: I am reading out of Document 1760.

THE PRESIDENT: Page what?

DR. KRANZBUEHLER: Page 2, last sentence before the Number 1.

THE PRESIDENT: Yes.

DR. KRANZBUEHLER: "Among those whom I saw frequently and to whom I have reference in many of my statements were the following."

Then after Number 16 Doenitz' name appears. My client has informed me that he has heard the name Messersmith today for the first time; that he does not know the witness Messersmith, has never seen him, nor has he every spoken with him.

I therefore request that the witness Messersmith be brought before the Court to state when and where he spoke to the defendant Doenitz.

THE PRESIDENT: The Tribunal has already ruled that the affidavit is admissible in evidence, that its purportive value will of course be considered by the Tribunal, and the defendants' counsel have the right, if they wish, to submit interrogatories for the examination of Messersmith, and of course defendants will have the

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opportunity of giving evidence when their turn comes, when Admiral Doenitz, if he thinks it right, will be able to deny the statements of the affidavit.

DR. KRANZBUEHLER: Thank you.

MR. ALDERMAN: I want to call the Court's attention to a slight mistranslation into German of one sentence of the Messersmith affidavit. In the German translation the word "nicht" crept in when the negative was not in the English.

The English statement was: "I deemed it expedient to delay my return call for several weeks in order to make it clear to von Papen that I had no sympathy with and on the other hand was familiar with the objectives of his mission in Austria."

The German text contains the negative: "Und dass ich anderseits nicht mit seiner Berufung und Zielen in Oesterreich vertraut war." The "nicht" shou not be in the German text.

The continued existence of Nazi organizations was a program of armed preparedness. The wiles of defendant von Papen represented only one part of the total program of Nazi conspiracy. At the same time Nazi activities in Austria, forced underground during this period, were carried on.

Mr. Messersmith's affidavit at Pages 9 and 10, the English text, discloses the following. Reading from the last main paragraph on Page 9:

"Nazi activities, forced underground in this period, were by no means neglected. The Party was greatly weakened for a time as a result of the energetic measures --

THE PRESIDENT: One moment. The French translation isn't coming through.

MR. ALDERMAN: Apparently it is a mechanical difficulty and not the interpretation.

THE PRESIDENT: Will you try again then?

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MR. ALDERMAN: I am informed that the French line is electrically dead and that it will take some little time to restore it.

THE PRESIDENT: We think it could be translated to the French members of the Tribunal, but we feel there may be some difficulty with the shorthand writers.

MR. ALDERMAN: That would be the main difficulty, yes, unless the shorthand writer could take one of the transcripts in one of the other languages and put it into French.

THE PRESIDENT: Very well, that seems to be possible.

MR. ALDERMAN: The French Prosecutor may object at not being able to hear.

The French Prosecutor states that not only the French Prosecutor would object at not being able to understand the proceedings, but that the French press is present and he has an interest in the French press understanding what is going on.

Colonel Dostert thinks a five-minute recess will enable him to fix it.

THE PRESIDENT: Very well, we will adjourn then.

(Whereupon a short recess was taken.)

MR. ALDERMAN: I was just reading from the bottom of page 9 of the Messersmith affidavit:

"Nazi activities, forced underground in this period, were by no means neglected. The Party was greatly weakened for a time as a result of the energetic measures taken against the Putsch and as a result of the public indignation. Reorganization work was soon begun. In October 1934 the Austrian Foreign Minister, Berger-Waldenegg, furnished me the following memorandum, which he told me had been supplied to the Austrian Government by a person who participated in the meeting under reference."

I quote the first paragraph of the memorandum:

"A meeting of the chiefs of the Austrian National Socialist Party was held on the 29th and 30th of September, 1934, at Bad Aibling in Bavaria."

Then, skipping four paragraphs and resuming on the fifth one:

"The agents of the Party Direction in Germany have received orders in every Austrian district to prepare lists of all those persons who are known

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to actively support the present Government and who are prepared closely to cooperate with it.

"When the next action against the Government takes place these persons are to be proceeded against just as brutally as against all those other persons, without distinction of party, who are known to be adversaries of National Socialism.

"In a report of the Party leaders for Austria the following principles have been emphasized:

"A. The taking over of the power in Austria remains the principal duty of the Austrian National Socialist Party. Austria has for the German Reich a much greater significance and value than the Saar. The Austrian problem is the problem. All combat methods are consecrated by the end which they are to serve.

"B. We must, on every occasion which presents itself, appear to be disposed to negotiate, but arm a t the same time for the struggle. The new phase of the struggle will be particularly serious and there will be this time two centers of the terror, one along the German frontier and the other along the Yugoslav frontier."

That ends the quotation from the memorandum.

I now proceed with the next paragraph of the affidavit:

"The Austrian Legion was kept in readiness in Germany. Although it was taken back some miles further from the Austrian frontier, it remained undissolve in spite of the engagement which had been taken to dissolve it. The Austrian Government received positive information to this effect from time to time which it passed on to me and I had direct information to the dame effects from reliable persons coming from Germany to Vienna who actually saw the Legion."

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The fact of the reorganization of the Nazi Party in Austria is corraborated by a report of one of the Austrian Nazis.

I offer in evidence our Document Number 812-PS, as Exhibit USA 61. It contains three parts. First, there is a letter dated August 22, 1939 from Mr. Rainer, then Gauleiter at Salzburg, to the defendant Seyss-Inquart, then Austrian Reich Minister. That letter encloses a letter dated July 6, 1939, written by Mr. Rainer to Reich Commissar, Gauleiter Josef Buerckel.

DR. LATERNSER: (Attorney for the defendant Seyss-Inquart): I object to the presentation of the letters contained in document No. 812. Of course, I cannot object to the presentation of this evidence to the extent that this evidence is to prove that these letters were actually written. However, if these letters are to serve as proof for the correctness of their contents, then I must object to the use of these letters, for the following reason. Particularly, the third document is a letter which, as is manifest from its contents, has a particular bias, for this reason, that in this letter it is explained to what extent the Austrian Nazi Party participated in the Anschluss.

It purports, further, to expose the leading role played by the group.

From the bias that is manifest in the contents of this letter, this letter cannot serve as proof for the facts brought forth in it, particularly since the witness Rainer, who wrote this letter, is available as a witness and, as we have discovered, is at present in Nurnberg.

I object to the use of this letter to the extent it is to be used to prove the correctness of its contents, because the witness who can testify to that is, at the present time, in Nurnberg.

THE PRESIDENT : The Tribunal will hear Mr. Alderman in answer to what has been said.

Mr. Alderman, the Tribunal has not as yet read the letter.

MR. ALDERMAN: No. I think perhaps it would be better to read the letter before we argue about the significance of its contents.

THE PRESIDENT: Well, are you relying upon the letter as evidence of the facts stated in it?

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THE PRESIDENT : The Tribunal will hear Mr. Alderman in answer to what has been said.

Mr. Alderman, the Tribunal has not as yet read the letter.

MR. ALDERMAN: No. I think perhaps it would be better to read the letter before we argue about the significance of its contents.

THE PRESIDENT: Well, are you relying upon the letter as evidence of the facts stated in it?

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MR. ALDERMAN: Yes.

THE PRESIDENT: Who is the letter from, and who is it to?

MR. ALDERMAN: The first letter is from one Mr. Rainer who was, at that time, Gauleiter at Salzburg, to the defendant Seyss-Inquart --

THE PRESIDENT: Yes.

MR. ALDERMAN: -- then Reich Minister of Austria.

That letter encloses a letter dated July 6, 1939, written by Rainer to Reich Commissar and Gauleiter Josef Buerckel. In that letter, in turn, Rainer enclosed a report on the events in the NSDAP of Austria from 1933 to March 11, 1938, the day before the invasion of Austria.

I had some other matters in connection with this that I did want to bring to the attention of the Tribunal before it passes upon the admissibility.

THE PRESIDENT: I don't think that the defendant's counsel is really challenging the admissibility of the document; it is the contents of the document.

MR. ALDERMAN: Yes. On that, in the first place, we are advised by defendant's counsel that this man Rainer is in Nurnberg. I would assume he is there.

We have also an affidavit by Rainer stating that what is stated in these communications is the truth. However, it seems to us that the communications themselves, as contemporaneous reports by a Party officer at the time, are much more probated evidence than anything that he might testify before you today.

DR. LATERNSER: I have already said that this letter has these characteristics, that it is biased,

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that it tends to emphasize and decorate the participation of the Austrian Nazi party on the Anschluss. Therefore, I must object to the use of this letter as objective evidence, that it was not written with the thought in mind that the letter would be used as evidence before a court. If he had known that, the letter undoubtedly would have been formulated differently.

I believe that the witness is in Nurnberg. In that case -- a principle which is a basis for all trial procedure -- the witness should be presented to the Court personally, particularly since, in this case, the difficulties that pertain to the question of Messersmith do not here pertain.

THE PRESIDENT: The Tribunal is of the opinion that the letters are admissible. They were written to and received by the defendant Seyss-Inquart. The defendant can challenge the contents of the letters by his evidence.

If it is true that Rainer is in Nurnberg, it is open to the defendant to apply to the Tribunal for leave to call Rainer in due course. He can then challenge the contents of these letters, both by the defendant Seyss-Inquart's evidence and by Rainer's evidence. The letters themsleves are admitted.

MR. ALDERMAN: May it please the Tribunal, I agree quite fully with the statement that if it had been known that these letters were to be offered in evidence in a court of justice, they very probably would have been differently written. That applies to a great part of the evidence that we shall offer in this case. And I would say that if the photographer who took the photograph of the Memorial Plaque had known that his photographs would be introduced in evidence in a conspiracy case, he probably never would have snapped the shutter.

The letter from Rainer to Buerckel indicates that he was asked to prepare a short history of the role of the Party. Perhaps I had better read the covering letter, addressed to the defendant Seyss-Inquart:

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"Dear Dr. Seyss:

"I have received your letter of 19 August, 1939, in which you asked me to inform you what I know of those matters which, among others, are the subject of your correspondence with Buerckel.

"I do not wish to discuss sundry talks and all that, what has been brought to my notice in the course of time by different people. I wish to clarify essentially my own attitude.

"On the 5th of July, 1939, I was asked by telephone by the Reich Commissioner Gauleiter Buerckel if I was in possession of the memorandum of Globus regarding the events of March. I told him that I do not have this memorandum and that I never possessed a single part of it, that I furthermore, did not then participate in the matter and do not know its content. Because of official requests by Buerckel, I have entrusted him with a report accompanied by a letter written on the 6th July.

"If Buerckel now writes to you that certain statements were confirmed by me, I feel obliged to entrust you with a copy each of my copies of those two documents, which were only written in single originals. I shall specially inform Buerckel of this. I connect this with the declaration, that I have given -- apart from those written explanations -- no confirmations, declarations, or criticisms whatsoever regarding you and your attitude and that I have authorized nobody to refer to any statements of mine.

"Since the beginning of our collaboration I have always expressed and represented forcefully my ideas regarding yourself and my opinion of your personality. This conception of mine was the very basis of our collaboration. The events of February and March have not changed this, especially since considered the political success of the 11th March merely as a confirmation of the

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"Dear Dr. Seyss:

"I have received your letter of 19 August, 1939, in which you asked me to inform you what I know of those matters which, among others, are the subject of your correspondence with Buerckel.

"I do not wish to discuss sundry talks and all that, what has been brought to my notice in the course of time by different people. I wish to clarify essentially my own attitude.

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"Since the beginning of our collaboration I have always expressed and represented forcefully my ideas regarding yourself and my opinion of your personality. This conception of mine was the very basis of our collaboration. The events of February and March have not changed this, especially since considered the political success of the 11th March merely as a confirmation of the

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intentions and convictions which have equally induced both of us to collaborate.

"As far as Globus is concerned, you are fully aware of his species, which I judged always and in every situation only by its good side. I believe that you have already talked to Globus about the occurrences between the 11th of March 1938 and today; and I am convinced that he will tell you everything that is bothering him, if you will speak to him about this matter, as is your intention.

"With best regards and Heil Hitler!

"Yours, Friedl Rainer."

And so Rainer writes his report, which is enclosed with this letter, to show that the Party as a whole is entitled to the glory which is excessively ascribed to one person, Dr. Seyss-Inquart.

I refer to the third paragraph of the first enclosure, the report to Reich Commissar Gauleiter Josef Buerckel:

"We saw in March and April how a false picture about the actual leadership conditions developed from this fact which could not be corrected in spite of our attempts to that effect. This was an important factor for the varying moods of Globocnik who hoped especially from you that you would emphasize for Hitler and also for the public the role of the party during the events preceding 12 March 1938. I limited myself to address this verbal and written declaration to party member Hess, and furthermore to secure the documents from the March days. In addition, I spoke at every available opportunity about the fight of the party. I did not undertake steps to give just credit to other persons for the glory which was excessively ascribed to one person, Dr. Seyss-Inquart, and I would not do that, primarily because I appear as a beneficiary, and furthermore, because I believe that I would not gladden Hitler by doing so. I am also convinced that Dr. Seyss-Inquart did not act crookedly, and furthermore that Hitler does not want to commit an act of historical justice by special preference to his person, but that he is attracted to him personally. It really is of no great account to Hitler if this or that person was more or less meritorious, in this sector of the great fight of the movement.

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Because, in the last analysis, by far the greatest part is to be ascribed only to him; he alone will be considered by history as the liberator of Austria. I, therefore, considered it best to accept existing conditions and look for new fertile fields of endeavor in the party.

"If I should be asked to describe -- without personal interest -- the role of the party according to my best conviction, I am ready to do so at any time. For this reason I promised yesterday to submit to you again a short summary, and to make it available for your confidential use. Of this letter and of this abbreviated description I retain the sole copy.

"Heil Hitler! Rainer."

Now, of course, all of these enclosures went to the defendant Seyss-Inquart, and he is fixed with knowledge of the contents of all of them.

It is a fact of history, of which the Court will take judicial notice, that Seyss-Inquart was the original Quisling. It so happened that the Norwegian Seyss-Inquart gave his name to posterity as a meaningful name, but all Quislings are alike.

The Tribunal will observe from this that the Rainer report is hardly likely to be tendentious, as counsel says, or to be prejudiced in favor of the defendant Seyss-Inquart's contribution to the Anschluss. It tends, on the contrary, to show that Seyss-Inquart was not quite so important as he might have thought he was. Even so, Rainer gives Seyss-Inquart credit enough.

The Rainer report further tells of the disorganization of the Nazi Party in Austria and of its reconstruction. I now quote the second and third paragraphs of the report, appearing on pages 3 and 4 of the English text of 812-PS, which is United States Exhibit 61; and I believe it is on pages 1 and 2 of the original German of the report of Bericht, which is the third part of the document:

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"Thus the first stage of battle commenced which ended with the July rising of 1934. The decision for the July rising was right, the execution of it was faulty. The result was a complete destruction of the organization; the loss of entire groups of fighters through imprisonment or flight into the 'Alt-Reich';"-- the old kingdom-- "and with regard to the political relationship of Germany to Austria, a formal acknowledgment of the existence of the Austrian State by the German Government. With the telegram to Papen, instructing him to reinstitute normal relationships between the two States, the Fuehrer had liquidated the first stage of the battle; and a new method of political penetration was to begin. By order of the Fuehrer the Landesleitung Munich was dissolved, and the party in Austria was left to its own resources.

"There was no acknowledged leader for the entire party in Austria. New leaderships were forming in the nine Gaus. The process was again and again interrupted by the interference of the police; there was no liaison between the formations, and frequently there were two, three or more rival leaderships. The first evident, acknowledged speaker of almost all the Gaus in Autumn 1934 was engineer Reinthaller (already appointed Landesbauernfuehrer-- leader of the country's farmers-- by Hess). He endeavoured to bring about a political appeasement by negotiations with the Government, with the purpose of giving the NSDAP legal status again, thus permitting its political activities. Simultaneously, Reinthaller started the reconstruction of the illegal political organization, at the head of which he had placed engineer Neubacher."

Next is the secret contacts between German officials, including the defendant von Papen, and the Austrian Nazis; the use by the Austrian Nazis of front personalities.

There are two cardinal factors concerning the Nazi Organization in Austria which should be borne in mind.

First, although the Fuehrer had, on the surface, cast the Austrian Nazis adrift--as indicated in the document I have just read--in fact, as we shall show, German officials, including von Papen, maintained secret contact with the Austrian Nazis in line with Hitler's desires. German officials consulted and gave advice and support to the organization of the Austrian Nazis.

In the second place, the Austrian Nazis remained an illegal organization in Austria, organizing for the eventual use of force in a so-called emergency. But, in the meantime they deemed it expedient to act behind front personalities, such as the defendant Seyss-Inquart, who had no apparent taint of illegality in his status in Austria.

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Mr. Messersmith relates, in his affidavit, that he got hold of a copy of a document outlining this Nazi program. I quote from page 8 of document 1760-PS, our serial number USA-57, the following:

"For two years following the failure of the July 25 Putsch, the Nazis remained relatively quiet in Austria. Very few terroristic acts occurred during the remainder of 1934 and, as I recall, in 1935, and most of 1936; this inactivity was in accordance with directives from Berlin as direct evidence to that effect, which came to my knowledge at that time, proved. Early in January, the Austrian Foreign Minister, Berger-Waldenegg, furnished me a document which I considered accurate in all respects, and which stated "--quoting from that document:

"The German Minister here, von Papen, on the occasion of his last visit to Berlin, was received three times by Chancellor Hitler for fairly long conversations, and he also took this opportunity to call on Schacht and von Neurath. In these conversations the following instructions were given to him:

"During the next two years nothing can be undertaken which will give Germany external political difficulties. On this ground, everything must be avoided which could awaken the appearance of Germany interfering in the internal affairs of Austria. Chancellor Hitler will, therefore, also for this reason, not endeavor to intervene in the present prevailing difficult crisis in the National Socialist Party in Austria, although he is convinced that order could be brought into the Party at once through a word from him. This word, however, he will, for foreign political reasons, give all the less, as he is convinced that the, for him, desirable ends may be reached also in another way. Naturally, Chancellor Hitler declared to the German Minister here, this does not indicate any disinterestedness in the idea of Austria's independence. Also, before everything, Germany cannot for the present withdraw Party members in Austria, and must, therefore, in spite of the very real exchange difficulties, make every effort to bring help to the persecuted National Socialist sufferers in Austria.

"As a result, Minister of Commerce Schacht finally gave the authorization that from then on 200,000 marks a month were to be set aside for this end

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(support of National Socialists in Austria). The control and the supervision of this monthly sum was to be entrusted to Engineer Reinthaler, who, through the fact that he alone had control over the money, would have a definite influence on the Party followers. In this way it would be possible to end most quickly and most easily the prevailing difficulties and divisions in the Austrian National Socialist Party.

"The hope was also expressed to Herr von Papen that the recently authorized foundation of German 'Ortsgruppen' of the National Socialist Party in Austria (made up of German citizens in Austria) would be so arranged as not to give the appearance that Germany is planning to interfere in Austrian internal affairs."

The report of Gauleiter Rainer to Reich Commissar Buerckel in July of 1939 outlines the further history of the Party and the leadership squabbles following the retirement of Reinthaler.

THE PRESIDENT: Do you think this would be a convenient time to break off until 2 o'clock?

MR. ALDERMAN: Yes, sir.

THE PRESIDENT: Very well, we will adjourn, then.

(Whereupon at 1245 hours the Tribunal was adjourned, to reconvene at 1400 hours on the same day.)

File copy

Official transcript of the International Military Tribunal, in the matter of: The United States of America, The French Republic, The United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering, et al, Defendants, sitting at Nürnberg, Germany, on 28 November, 1945, 1400-1630, Lord Justice Lawrence, presiding.

MR. ALDERMAN: May it please the Tribunal, I had just referred again to the report of Gauleiter Rainer to Reich Commissar Buerkel in July 1939, which outlines the further history of the Party and the leadership following the retirement of Reinthaller.

In referring to the situation in 1935, he mentioned some of the contacts with the Reich Government, that is, the German Government, in the following terms. I quote from page 4 of the English text of that report, and I believe from page 4 of the German text: "In August some further arrests took place . . ."

THE PRESIDENT: Which document are you on?

MR. ALDERMAN: That is the Rainer Report, which is 812-PS.

"In August some further arrests took place, the victims of which were, apart from the Gauleaders (or Gauleiters), also Globocnik and Rainer. Schattenfroh then claimed, because of an instruction received from the imprisoned Leopold, to have been made deputy country leader. A group led by engineer Raffelsberger had at this time also established connection with departments of the Alt-Reich (Ministry of Propaganda, German Racial Agency, etc.) and made an attempt to formulate a political motto in the form of a program for the fighting movement of Austria."

And, again, the Rainer report sets forth the situation a little later in 1936. I quote from page 6 of the English

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text, and I think page 5 of the German text:

"The principles of the construction of the organization were: The organization is the bearer of the illegal fight and the trustee of the idea to create a secret organization, in a simple manner and without compromise, according to the principle of organizing an elite to be available to the illegal land-party council upon any emergency. Besides this, all political opportunities should be taken and all legal people and legal chances should be used without revealing any ties with the illegal organization. Therefore, cooperation between the illegal party organization and the legal political aides was anchored at the top of the party leadership. All connections with the party in Germany were kept secret in accordance with the orders of the Fuhrer. These said that the German state should officially be omitted from the creation of an Austrian NSDAP; and that auxiliary centers for propaganda, press, refugees, welfare, etc. should be established in the foreign countries bordering Austria.

"Hinterleitner already contacted the lawyer Seyss-Inquart, who had connection with Dr. Wachter which originated from Seyss-Inquart's support of the July uprising. On the other side Seyss-Inquart had a good position in the legal field and especially well-established relations with Christian-Social politicians.
Dr. Seyss-Inquart came from the ranks of the 'Styrian Heimatschutz' (home defense) and became a party member when the entire 'Styrian Heimatschutz' was incorporated into the NSDAP. Another personality who had a good position in the legal field was Col. Glaise-Horstenau who had contacts with both sides. The agreement of 11 July 1936 was strongly influenced by the activities of these

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two persons."

The Rainer report thus discloses the dual activity of the Austrian Nazis during this period of keeping quiet and awaiting developments. They were maintaining their secret contacts with Reich officials, and using foreign personalities such as Glaise-Horstenau and Seyss-Inquart. The Nazis made good use of such figures, who were more discreet in their activities and could be referred to as nationalists. They presented, supported, and obtained consideration of demands which could not be negotiated by other Nazis like Captain Leopold.

Seyss-Inquart did not hold any public office until January 1937, when he was made counsellor of state. But Rainer, describing him as a trustworthy member of the Party through the ranks of this "Styrian Heimatschutz", points him out as one who strongly influenced the agreement of July 11, 1936. The strategic principle of that agreement will be cons idered a little later. Rainer's report, as I have said before, was hardly likely to over-emphasize the significance of Seyss-Inquart's contribution.

That the Nazi, but not the Austrian Government, did well to trust Seyss-Inquart is indicated by the next document. I propose to offer in evidence document 2219-PS, which I offer in evidence as Exhibit USA 62. This is a letter dated 14 July 1939, addressed to Field Marshal Goering. The document is a typed carbon copy of the letter. It ends with the Heil Hitler termination, and it is not signed, but we think it was undoubtedly written by the defendant Seyss-Inquart. It was the carbon copy found among Seyss-Inquart's personal files, and such carbon copies kept by authors of letters usually are not signed. On the first page of the letter

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there appears a note in English, not indicated in the partial English translation, reading, "Air Mail, 15 July, 1515 hours, Berlin, brought to Goering's office". The main text of the letter consists of a plea for intercession in behalf of Muehlmann whose name we shall meet later and who, unfortunately, got into Buerckel's bad graces. I shall quote the extract part of the document which has been translated into English, and which starts, I believe, on page 7 of the German text:

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To the General Field Marshal, At present in Vienna,
14 July 1939

Sir:

If I may add something about myself, it is the following: I know that I am not of an active fighting nature, unless final decisions are at stake. At this time of pronounced activism (aktivismus) this will certainly be regarded as a fault in my personality. Yet I know that I cling with unconquerable tenacity to the goal in which I believe. That is Greater Germany (Grossdeutschland) and the FUEHRER. And if some people are already tired out from the struggle and some have been killed in the fight, I am still around somewhere and ready to go into action. This, after all, was also the development until the year 1938. Until July 1934, I conducted myself as a regular member of the party. And if I had quietly, in whatever form, paid my membership dues the first one, according to a receipt, I paid in December 1931. I probably would have been an undisputed, comparatively old fighter and party member of Austria, but I would not have done any more for the union. I told myself in July 1934 that we must fight this clerical regime on its own ground in order to give the Fuehrer a chance to use whatever method he desired. I told myself that this Austria was worth a mass. I have stuck to this attitude with an iron determination because I and my friends had to fight against the whole political church, the Freemasonry, the Jewry, in short, against everything in Austria. The slightest weakness which we might have displayed would undoubtedly have led to political annihilation; it would have deprived the Fuehrer of the means and tools to carry out his ingenious political solution for Austria, as became evident in the days of March 1938. I have been fully conscious of

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the fact that I am following a path which is not comprehensible to the masses and also not to my party comrades. I followed it calmly and would without hesitation follow it again because I am satisfied that at one point I could serve the FUEHRER as a tool in his work, even though my former attitude even now gives occasion to very worthy and honorable party comrades to doubt my trustworthiness. I have never paid attention to such things because I am satisfied with the opinion which the FUEHRER and the men close to him have of me.

Now , that letter was written to one of the men close to him--to Field Marshal Goering. I think that suffices to demonstrate Seyss-Inquart as one whose loyalty to Hitler, a foreign dictator, and to the aims of the Nazi conspiracy, led him to fight for Ans chluss with all the means at his disposal.

It is appropriate at this time to offer in evidence a document from the defendant Von Papen, and to see how he thought the doctrines of National Socialism could be used to effect the aim of Anschluss. I offer document 2248-PS as Exhibit USA 63. This document is a letter from Von Papen to Hitler, dated July 27, 1935. It consists of a report entitled "Review and Outlook One Year After the Death of Chancellor Dollfuss." After reviewing the success that the Austrian Government had had in establishing Dollfuss as a martyr, and his principles as to the patriotic priciples of Austria, Von Papen stated, and I quote the last paragraph of the letter, beginning on page 1 - 146 of the German text:

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"National socialism must and will overpower the new Austrian ideology. If to-day it is contended in Austria that the N.S.D.A.P. is only a centralized Reich German party and therefore unable to transfer the spirit of thought of National Socialism to groups of people of a different political make-up, the answer must rightly be that the national revolution in Germany could not have been brought about in a different way. But when the creation of the people's community in the Reich will be completed, National socialsim could, in a much wider sense than this is possible through the present party organization - at least apparently certainly become the rallying point for all racially German units beyond the borders. Spiritual progress in regard to Austria cannot be achieved to-day with any centralized tendency. If this recognition would one and for all be stated clearly from within the Reich, then it would easily become possible to effect a break-through into the front of the New Austria. A Nurnberg Party Day designated as "The German Day" as in old times and the proclamation of a national socialistic peoples' front, would be a stirring event for all beyond the borders of the Reich. Such attacks would win us also the particularistic Austrian circles, whose spokesman, the legitimistic Count Dubsky wrote in his pamphlet about the "Anschluss": The Third Reich will be with Austria, or it will not be at all. National Socialism must win it or it will perish, if it is unable to solve this task!

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We have other reports from Paper to Hitler which I shall offer in evidence presently, showing that he maintained covert contact with the national socialist groups in Austria. It is certainly interesting that from the very start of his mission defendant Von Papen was thinking of ways and means of using the principle of national socialism for national Germans outside the border of Germany. Von Papen was working for Anschluss, and although he preferred to use the principles of national socialism rather than rely on the party organization, he was prepared to defend the party organization as a necessary means of establishing these principles in the German Reich.

Next we have some assurance and reassurances to Austria. The German Government did more than keep up a pretense of non-interference with Austrian

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groups. It employed the psychological inducement of providing assurances that it had no designs on Austrian independence. If Austria could find hope for the execution of those assurances, she could find her way clear to the granting of concessions and obtain relief from the economic and internal measures.

I offer Document 2247-PS in evidence as Exhibit USA 64. It is a letter from Von Papen while in Berlin to Hitler, dated May 17, 1935.

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Von Papen's letter indicated to Hitler that a forthright, credible statement by Germany, reassuring Austria, would be most useful for German diplomatic purposes and for the improvement of relationships between Austria and German groups in Austria.

He had a scheme for pitting Schuschnigg and his Social-Christian forces against Starhemberg, the Vice-Chancellor of Austria, who was backed by Mussolini. He hoped to persuade Schuschnigg to ally his forces with the NSDAP in order to emerge victorious over Starhemberg. Von Papen indicates that he obtained this idea from Captain Leopold, leader of the illegal National Socialists in Austria.

I quote from his letter, starting at the second paragraph of the second page.

This is Von Papen writing to "Mein Fuehrer", Hitler.

"I suggest that we take an active part in this game. The fundamental idea should be to pit Schuschnigg and his Christian-Social forces, who are opposed to a home front dictatorship, against Starhemberg. The possibility of thwarting the measures arranged between Mussolini and Starhemberg should be afforded him, in such a way that he would submit the offer to the government of a definite German-Austrian compromise of interests. According to the convincing opinion of the Leader of the NSDAP in Austria, Captain Leopold, the totalitarian principle of the NSDAP in Austria must be replaced in the beginning by a combination of that part of the Christian elements which favors the Greater Germany ideas and the NSDAP. If Germany recognizes the national independence of Austria and guarantees full freedome to the Austrian national opposition, then as a result of such a compromise the Austrian government would be formed in the beginning by a coalition of these forces. A further consequence of this step would be the possibility of the participation of Germany in the Danube Pact, which would take the sting out of its acuteness due to the settlement of relations between Germany and Austria. Such a measure would have a most beneficial influence on the European situation and especially on our relationship with England. One may object, that Mr. Schuschnigg will hardly be determined to follow

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such a pattern, that he will rather in all probability immediately communicate our offer to our opponents. Of course, one should first of all explore the possibility of setting Schuschnigg against Starhemberg through the use of "go betweens". The possibility exists! If Mr. Schuschnigg finally says "no" and makes our offer known in Rome, then the situation would not be any worse, but, on the contrary, the efforts of the Reich government to make peace with Austria would be revealed -- without prejudice to other interests. Therefore, even in the case of refusal this last attempt would be an asset. I consider it completely possible, that in view of the farspread dislike of the Alpine countries of the pro-Italian course and in view of the sharp tensions within the federal government (that is Bundersreigierung), Mr. Schuschnigg will grasp this last straw -- always under the supposition that the offer could not be interpreted as a trap by the opponents, but that it bears all the mark of an actually honest compromise with Austria. Assuming success of this step, we would again establish our active intervention in Central European politics, which, as opposed to the French-Czech and Russian political maneuvers, would be a tremendous success, both morally and practically. Since there are two weeks left to accomplish very much work in the way of explorations and Conferences, an immediate decision is necessary. The Reich Army Minister (Reichswehrminister) shares the opinion presented above and the Reich Foreign Minister (Reichsaussenminister) wanted to discuss it with you my Fuehrer.

"Signed, Papen."

In other words, Papen wanted a strong assurance and credible assurance of Austria's independence. As he put it, Germany had nothing to lose, with what it could always call a mere effort at peace and she might be able to convince Schuschnigg to establish an Austrian coalition government, with the NSDAP. If she did this, she would vastly strengthen her position in Europe. Finally Papen urged haste.

Exactly four days later, in a Reichstag address, Hitler responded to von Papen's suggestion, and asserted: "Germany neither intends nor wishes to interfere in the internal affairs of Austria, to annex Austria or

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to conclude an Anschluss." The British will present a document covering that speech. I merely wanted to use one sentence at this point. It is a sentence quite well-known to history.

It is appropriate to take notice of this assurance at this point, and to note that for a complexity of reasons, Papen suggested and Hitler announced a policy completely at variance with their intentions, which had been, and continued to be, to interfere in Austria's internal affairs and to conclude an Anschluss.

There was a temporary continuance of a quite pressure policy.

On May 1, 1936, Hitler in a public speech, branded as a lie any statement that "tomorrow or the day after" Germany would fall upon Austria. I invite the Court's attention to the version appearing in the "Volkische Beobachter SD," that is South Germany, 2 to 3 May 1936, page 2, and translated in our document 2367-PS.

Without offering that document, I ask the Court to take judicial notice of that

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statement, in that well-known speech.

If Hitler meant what he said, it was only in the most literal and misleading sense, that is, that he would not actually fall upon Austria "tomorrow or the day after tomorrow." For the conspirators well knew that the successful execution of their purpose required for a while longer the quiet policy they had been pursuing in Austria.

I now offer in evidence our document L-150, Memorandum of Conversation between Ambassador Bullitt and the defendant, von Neurath, on 18 May, 1936. This document unfortunately again appears in your document books in German, as due to an error, it has not been mimeographed in English. German counsel have the German copies.

I shall read from it and at the same time, hand to the interpreter reading in German, a marked copy of a German translation.

I might read one sentence from the first paragraph.

"I called on von Neurath, Minister of Foreign Affairs, on May 18 and had a long talk on the general European situation."

I will read straight on, I beg your pardon.

"Von Neurath said that it was the policy of the German Government to do nothing active in foreign affairs until the Rhineland had been digested. He explained that he meant that until the German fortifications had been constructed on the French and Belgium frontiers, the German Government would do everything possible to prevent, rather than encourage, an outbreak by the Nazis in Austria and would pursue a quiet line with regard to Czechoslovakia.

"Quoting: 'As soon as our fortifications are constructed, and the countries of Central Europe realize that France cannot enter German territory at will, all those countries will begin to feel very differently about their foreign policies and a new constellation will develop,' he said."

I skip then two paragraphs.

"Von Neurath then stated that no understanding had been reached between Germany and Italy and admitted that the demonstrations of friendship between Germany and Italy were mere demonstrations without basis in reality. He went on to say that at the present time he could see no way to reconcile

the conflicting interests of Germany and Italy in Austria. He said that there were three chief reasons why the German Government was urging the Austrian Nazis to remain quiet at the present time:

"The first was that Mussolini had today, the greater part of his Army mobilized on the Austrian border, ready to strike and that he would certainly strike if he should have a good excuse.

"The second reason for urging Austrian Nazis to remain quiet for the present was that the Nazi movement was growing stronger daily in Austria. The youth of Austria was turning more and more towards the Nazis and the dominance of the Nazi Party in Austria was inevitable and only a question of time.

"The third reason was that until the German fortifications had been constructed on the French border, an involvement of Germany in war with Italy might lead to a French attack on Germany."

But if Germany was not yet ready for open conflict in Austria, its diplomatic position was vastly improved over 1934, a fact which influenced Austria's willingness to make concessions to Germany and come to terms.

I quote again from the Messersmith affidavit, on page 11 of the English text; that is document 1760 PS.

"Developments in the fall of 1935 and the spring of 1936 gave Germany an opportunity to take more positive steps in the direction of the Nazification of Austria. Italy, which had given Austria assurance of support of the most definite character against external German aggression, and on one occasion by mobilizing her forces, had undoubtedly stopped German aggressive action, which had been planned against Austria, embarked on her Abyssinian adventure. This and the reoccupation of the Rhineland in 1936 completely upset the balance in Europe. It is quite obvious that after Italy had launched her Abyssinian adventure, she was no longer in any position to counter German aggressive moves against Austria."

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This weakening of Austria helped to pave the way for the Pact of July 11, 1936. On July 1 1, 1936, the Governments of Austria and Germany concluded an accord. That will be offered in evidence also by the British Delegation.

I merely ask a point that the Tribunal take judicial notice of the fact that such an accord was entered into. The formal part of the agreement of July 11, 1936, will also be proved by our British colleagues. For convenient reference, it will be found in the document which the British will offer, TC-22, and the substance of it is also contained on pages 11 and 12 of Mr. Messersmith's affidavit, 1760-PS.

Upon the basis of this fight alone, the agreement looked like a great triumph for Austria. It contains a confusing provision to the effect that Austria in its policy, especially with regards to Germany, would regard herself as a German state, but the other two provisions clearly state that Germany recognizes the full sovereignty of Austria and that it regards the inner political order of Austria, including the question of Austria and National Socialism, as an internal concern of Austria upon which it, Germany, will exercise neither direct nor indirect influence. But there was much more substance to today's events than appears in the text of the accord. I refer to Mr. Messersmith's summary as set forth on page 12 of his affidavit, 1760-PS, as follows:

"Even more important than the terms of the agreement published in the official communique, was the contemporaneous informal understanding, the most important provisions of which were that Austria would: (1) Appoint a number of individuals enjoying the Chancellor's confidence but friendly to Germany, to positions in the Cabinet: (2) with the devised means to give the National opposition a role in the political life of Austria within the framework of the Patriotic Front; and (3) with amnesty for all Nazis, save those convicted of the most serious offenses." This amnesty was duly announced by the

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Austrian Government and thousands of Nazis were released, and the first penetration of Deutsche Nazionale into the Austrian Government was accomplished by the appointment of Justice Guido Schmidt as Secretary of State for Foreign Affairs and of Dr. Edmund Glaise-Horstenau as Minister without portfolio.

I now offer in evidence Document 2994 PS, which is an affidavit by Kurt von Schuschnigg, Foreign Chancellor of Austria, executed at Nurnberg, Germany, on 19 November, 1945. I offer this as Exhibit USA 66. The Defendants have received German translations of that evidence.

MR. LATERNSER: (Defense Counsel) In the name of the accused, Seyss-Inquart, I should like to protest against the production of the written evidence by the witness, Schuschnigg, and for the following reasons: Today, when the resolution was announced, in respect of the use to be made of the written evidence of Mr. Messersmith, the Court was of the opinion that in a case of very great importance, that possibly it would take a different view of the matter. In respect of the Austrian conflict, for which Schuschnigg is the most important witness, it was the witness who at the time of his office of Federal Chancellor was affected. As it is a case of such an important witness, the principle of direct evidence must be adhered to in order that the Court is in a position to ascertain the actual truth in this case. The accused and his Defense Counsel would feel prejudiced in his defense. I must, therefore, keep to this viewpoint as it is to be assumed that the witness, von Schuschnigg, will be able to confirm certain facts which are in favor of the accused, Seyss-Inquart.

I, therefore, make the application that the Court might order that the written evidence of the witness, von Schuschnigg, be not admitted.

THE PRESIDENT: If you have finished, the Tribunal will hear Mr. Alderman.

MR. ALDERMAN: May it please the Tribunal, at this point I am simply proposing to offer this affidavit for the purpose of showing

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the terms of the secret understanding between the German and Austrian Governments in connection with this accord. It is not for any purpose to incriminate the Defendant, Seyss-Inquart, that it is being offered at this point.

MR. LATERNSER: May I add to my application that the witness, von Schuschnigg, on the 19 of November, 1945, was heard in Nurnberg and that if an interrogation on the 19 of November was possible, that such a short time later it ought to be possible, especially as the interrogation before this Court is of especial importance to the accused.

THE PRESIDENT: The Tribunal will recess now to consider this question.

(Whereupon, at 1515 a short recess was taken.)

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THE PRESIDENT: The Tribunal has considered the objection to the affidavit of Schuschnigg and upholds the objection.

If the prosecution desire to call Schuschnigg as a witness they can apply to do so. Equally the defense, if they wish to call Schuschnigg as a witness, can apply to do so. In the event of Schuschnigg not being able to be produced the question of affidavit-evidence by Schuschnigg being given will be reconsidered.

MR. ALDERMAN: May it please the Tribunal, in view of the strategy and tactics of the Nazis' concessions as indicated in the portion of the Messersmith affidavit that I read, substantial concessions were made by Austria to obtain Germany's diplomatic formal assurance of Austrian independence and non-intervention in Austrian external affairs.

The release of employed Nazis presented potential police problems, and as Mr. Messersmith pointed out in 1934 dispatch to the United States State Department quoted on pages twelve to thirteen of his affidavit:

"Any prospect that the National Socialists might come to power would make it more difficult to obtain effective police and judicial action against the Nazis for fear of reprisals by the future Nazi Government against those taking action against Nazis even in the line of duty. The preservation of external peace in Austria was less independent upon Germany's living up to its obligation under the accord.

Next, Germany's continuing program of weakening the Austrian Government. In the pact of 11 July 1936 Germany agreed not to influence directly or indirectly the external affairs of Austria, including the matter of Austrian National Socialism.

On 16 July 1936, just five days later, Hitler violated that provision. I quote from Document 812-PS, which is exhibit U.S.A. 61, the report of Gauleiter Reiner to Commissioner Buerckel, all of which was forwarded to the defendant Seyss-Inquart at page six of the English and I believe also page six of the German version.

"At that time the Fuehrer wished to see the leaders of the party in Austria in order to tell them his opinion on what Austrian National-

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Socialists should do. Meanwhile Hinterleitner was arrested, and Doctor Rainer became his successor and leader of the Austrian party. On 16 July 1936 Doctor Rainer and Globocnik visited the Fuehrer at the Obersalzburg where they received a clear explanation of the situation and the wishes of the Fuehrer. On 17 July 1936 all illegal Gauleiters met in Anif near Salzburg, where they received a complete report from Rainer on the statement of the Fuehrer and his political instructions for carrying out the fight. At this same conference the Gauleiters received organizational instructions from Globocnik and Hiedler."

I am skipping a paragraph in the German version. "Upon the proposal of Globocnik, the Fuehrer named Lt. Gen. (Gruppenfuehrer) Keppler as chief of the mixed commission which was appointed, in accordance with the state treaty of 11 July 1936, to supervise the correct execution of the agreement. At the same time Keppler was given full authority by the Fuehrer for the party in Austria. After Keppler was unsuccessful in his efforts to cooperate with Leopold, he worked together with Doctor Rainer, Globocnik, Reinthaller as leader of the peasants, Kaltenbrunner (that is the defendant Kaltenbrunner in this case) as leader of the SS, and Doctor Jury as deputy-leader of the Austrian party, as well as with Glaise-Herstenau and Seyss-Inquart."

A new strategy was developed for the Austrian Nazis. Mr. Messersmith describes briefly--and I quote from page thirteen of his affidavit, 1760-PS: "The sequel of the agreement was the only one which could have been expected in view of all the facts and previous recorded happenings." Active Nazi operations in Austria were resumed under the leadership of a certain Captain Leopold who it was known definitely was in frequent touch with Hitler. The Nazi program was now to form an organisation through which the Nazis could carry on their operations openly and with legal sanction in Austria. There are several organizations which had a legal basis, but which were simply a device by which the Nazis in Austria could organize and later seek inclusion as a unit in the Patriotic Front. The most important of these was the Ostmarkische Verein, the Union of the East Mark, the sponsor of which was the Minister of the Interior, Glaise-Horstenau. Through the

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influence of Glaise-Horstenau and pro-Nazi Neustadter Stuermer, this organization was declared legal by the court.

I make specific mention of the foregoing because it shows the degree to which the situation in Austria had disintegrated as a result of the underground and open Nazi activities directed from Germany.

At this point I offer in evidence Document 2246-PS as Exhibit U.S.A. 67, a captured German document which is a report from

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von Papen to Hitler dated September 1, 1936. This document is most interesting because it indicates von Papen's strategy after July 11, 1936, for destroying Austria's independence. Von Papen had taken a substantial step forward with the agreement of July 11. It should be noted, incidentally, that after that agreement he was promoted from Minister to Ambassador. Now his tactics were developed in the following term; I quote the last three paragraphs of his letter of September 1, 1936, to the Fuehrer and Reich Chancellor. Those three paragraphs are all joined as one paragraph in the English text.

"The progress of normalizing relations with Germany at the present time is obstructed by the continued persistence of the Ministry of Security, occupied by the old anti-National Socialistic officials. Changes in personnel are therefore of utmost importance. But they are definitely not to be expected prior to the conference on the abolishing of the Control of Finances at Geneva. The Chancellor of the League has informed Minister de Glaise-Horstenau of his intention to offer him the portfolio of the Ministry of the Interior. As a guiding principle 'Marschroute' (that is the German word; that is the 'Route of March') I recommend on the tactical side continued, patient, psychological treatment with slowly intensified pressure directed at changing the regime. The proposed conference on economic relations, taking place at the end of October, will be a very useful tool for the realisation of some of our projects. In discussion with Government officials as well as with leaders of the illegal party--Leopold and Schattenfroh--who conform completely with the agreement of July 11. (I think that should be a comma.) I am trying to direct the next developments in such a manner to aim at corporative representation of the movement in the Fatherland front, but nevertheless refraining from putting National-Socialists in important positions for the time being. However, such positions are to be occupied only by personalities having the support and the confidence of the movement. I have a willing collaborator in this respect in Minister Glaise-Horstenau."

Citing Papen. To recapitulate this report by von Papen to Hitler discloses the following plan:

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(a) Obtaining a change in personnel in the Austrian Ministry of Security in due course.

(b) Obtaining corporative representation of the Nazi movement in the Fatherland front.

(c) Not putting avowed National-Socialists in important positions yet, but using Nationalist personalities.

(d) Using economic pressure and patient psychological treatment with slowly intensified pressure directed at changing the regime.

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(MR. ALDERMAN SPEAKING)

My next subject is "Germany's Diplomatic Preparations for the Conquest of Austria."

The program of the Nazi conspiracy with respect to Austria consisted of weakening that country externally and internally by removing its support from without as well as by penetrating within. This program was of the utmost significance, especially since, as the Court will remember, the events of 25 July 1934 inside Austria were over-shadowed in the news of the day by the fact that Mussolini had brought his troops to the Brenner Pass and poised there as a strong protector of his Northern neighbor, Austria.

Accordingly, interference in the affairs of Austria, and steady increase in the pressure needed to acquire control over that country, required removal of the possibility that Italy or any other country would come to its aid. But the foreign policy program of the conspiracy for the weakening and isolation of Austria was integrated with their foreign policy program in Europe generally.

I should like, therefore, at this juncture, to digress for a moment from the presentation of evidence bearing on Austria alone and to consider with the Tribunal the general foreign policy program of the Nazis. It is not my intention to examine this subject in any detail. Historians and scholars exhausting the archives will have many years of exploring all the details and ramifications of European diplomacy during this fateful decade.

It is instead my purpose to mention very briefly the highlights of the Nazi's diplomatic preparation for war.

In this connection I should like to offer to the Tribunal Document No. 2385 PS, a second affidavit of George S. Messersmith executed on 30 August 1945 at Mexico City. This has been made available to the defendants in German, as well

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as in English.

This is a different affidavit from Document No. 1760 PS which was executed August 28th. This second affidavit, which I offer as Exhibit U.S.A.68, consists of a presentation of the diplomatic portion of the program of the Nazi party. To a considerable extent it merely states facts of common knowledge, facts that many people who are generally well-informed already know. It also gives us facts which are common knowledge in the circle of diplomats or of students of foreign affairs. It consists of some 11 mimeographed pages, single-spaced. I read from the third paragraph in the affidavit, beginning with the third paragraph:

"As early as 1933, while I served in Germany, the German and Nazi contacts which I had in the highest and secondary categories openly acknowledged Germany's ambitions to dominate Southeastern Europe from Czechoslovakia down to Turkey. As they freely stated, the objective was territorial expansion in the case of Austria and Czechoslovakia. The professed objectives in the earlier stages of the Nazi regime, in the remainder of Southeastern Europe, were political and economic control and they did not at that time speak so definitely of actual absorption and destruction of sovereignty. Their ambitions, however, were not limited to Southeastern Europe. From the very beginnings of 1933, and even before the Nazis came into power, important Nazis speaking of the Ukraine freely said that "it must be our granary" and that "even with Southeastern Europe under our control, Germany needs and must have the greater part of the Ukraine in order to be able to feed the people of greater Germany". After I left Germany in the middle of 1934 for my post in Austria, I continued to receive information as to the German designs in Southeastern Europe. In a conversation with von Papen

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shortly after his appointment as German Minister to Austria in 1934, von Papen frankly stated to me that "Southeastern Europe to Turkey is Germany's Hinterland and I have been designated to carry through the task of bringing it within the fold. Austria is the first on the program." As I learned through my diplomatic colleagues, von Papen in Vienna and his colleague von Mackensen in Budapest, were openly propagating the idea of the dismemberment and final absorption of Czechoslovakia as early as 1935."

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Then, skipping a short paragraph, I resume:

"Immediately after the Nazis came into power, they started a vast rearmament program. This was one of the primary immediate objectives of the Nazi regime. As a matter of fact, the two immediate objectives of the Nazi regime, when it came into power, had to be, and were, according to their own statements frequently made to me, first, to bring about the complete and absolute establishment of their power over Germany and the German people, so that they would become in every respect willing and capable instruments of the regime to carry through its ends; and second, the establishment of a tremendous armed power within Germany in order that the political and economic program in South-eastern Europe and in Europe could be carried through by force if necessary, but probably by a threat of force. It was characteristic that in carrying through this second aim, they emphasized from the very outset the building of an overpowering air force. Goering and Milch often said to me or in my presence that the Nazis had decided to concentrate on air power as the weapon of terror most likely to give Germany a dominant position and the weapon which could be developed the most rapidly and in the shortest time."

Skipping to the end of that paragraph, and resuming at the next:

"At the same time that this rearmament program was in progress, the Nazi regime took all possible measures to prepare the German people for war in the psychological sense. Throughout Germany, for example, one saw everywhere German youth of all ages engaged in military exercises, drilling, field maneuvers, practicing the throwing of hand grenades, etc. In this connection I wrote in an official communication in November 1933, from Berlin as follows:

. . . . 'Everything that is being done in the country today has for its object to make the people believe that Germany is threatened vitally in every aspect of its life by outside influences and by other countries. Everything is being done to use this feeling to stimulate military training and exercises, and innumerable measures are being taken to develop the German people into a hardy, sturdy race which will be able to meet all comers. The military spirit is constantly growing. It cannot be otherwise. The leaders of Germany today have no desire

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for peace unless it is a peace which the world makes at the expense of complete compliance with German desires and ambitions. Hitler and his associates really and sincerely want peace for the moment, but only to have a chance to get ready to use force if it is found finally essential. They are preparing their way so carefully that there is not in my mind any question but that the German people will be with them when they want to use force and when they feel that they have the necessary means to carry through their objects . . .'"

One further sentence following that I quote: "Military preparation and psychological preparation were coupled with diplomatic preparation designed to so disunite and isolate their intended victims as to render them defenceless against German aggression."

In 1933 the difficulties facing Germany in the political and diplomatic field loomed large. France was the dominant military power on the continent. She had a system of mutual assistance in the West and in the East.

The Locarno Pact of 1928, supplemented by the Franco-Belgian alliance, guaranteed the territorial status quo in the West. Yugoslavia, Czechoslovakia and Rumania were allied in the Little Entente and each, in turn, was united with France by Mutual Assistance Pacts. Since 1922, France and Poland and likewise been allied against external aggression. Italy had made plain her special interest in Austrian independence.

Nazi Germany launched a vigorous diplomatic campaign to break up the existing alliances and understandings, to create divisions among the members of the Little Entente and the other Eastern European powers.

Specifically, Nazi Germany countered these alliances with promises of economic gain for cooperating with Germany. To some of these countries she offered extravagant promises of territorial and economic rewards. She offered Corinthia to Austria, to Yugoslavia. She offered part of Czechoslovakia

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to Hungary and part to Poland. She offered Yugoslav territory to Hungary, at the same time that she was offering land in Hungary to Yugoslavia.

As Mr. Messersmith states in his affidavit that is 2385-PS, at page 5:

"Austria and Csechoslovakia were the first on the German program of aggression. As early as 1934, Germany began to woo neighbors of these countries with the promises of a share in the loot. To Yugolsavia in particular they offered Corinthia. Concerning the Yugoslav reaction, I reported at the time:

'. . The major factor in the internal situation in the last week has been the increase in tension with respect to the Austrian Nazi refugees in Yugoslavia. . . There is very little doubt but that Goering, when he made his trip to various capitals in Southeastern Europe about six months ago, told the Yugolsavs that they would get a part of Corinthia, when a National Socialist Government came into power in Austria . . The Nazi seed sown in Yugoslavia had been sufficient to cause trouble and there are undoubtedly a good many people there who look with a great deal of benevolence on those Nazi refugees who went to Yugoslavia in the days following July 25.'

"Germany made like promises of teritorial gains to Hungary and to Poland in order to gain their cooperation or at least their acquiescence in the proposed simemberment of Czechoslovakia. As I l arned from my diplomatic colleagues in Vienna, von Papen and von Mackensen in Vienna and in Budapest in 1935, were spreading the idea of division of Czechoslovakia, in which division Germany was to get Bohemia, Hungary to get Slovakia, and Poland the rest. This did not deceive any of these countries for they knew that the intention of Nazi Germany was to take all.

"The Nazi German Government did not hesitate to make inconsistent promises when it suited its immediate object. I recall the Yugolsav Minister in Vienna saying to me in 1934 or 1935, that Germany had made promises to Hungary of Yugoslav territory while at the same time promising to Yugoslavs portions of Hungarian territory. The Hungarian Minister in Vienna later gave me the same information.

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"I should emphasize here in this statement that the men who made these promises were not only the died-in-the-wool Nazis but more conservative Germans who already had begun to willingly lend themselves to the Nazi program. In an official dispatch to the Department of State from Vienna dated October 10, 1935, I wrote as follows:

> '. . Europe will not get away from the myth that Neurath, Papen and Mackensen are not dangerous people and that they are "diplomats of the old school." They are in fact servile instruments of the regime and just because the outside world looks upon them as harmless, they are able to work more effectively. They are able to sow discord just because they propagate the myth that they are not in sympathy with the regime."

I find that last paragraph very important and worthy of emphasis. In other words, Nazi Germany was able to promote these division and increase its own aggressive strength by using as its agents in making these promises, men who on outward appearances, were merely conservative diplomats. It is true that Nazis openly scoffed at any notion of international obligations, as I shall show in a moment. It is true that the real trump in Germany's hand was its rearmament and more than that, its willingness to go to war. And yet the attitude of the various countries was not influenced by these considerations alone.

With all these countries, and I suppose with all persons, we are not always completely rational. We tend to believe what we want to believe. And if an apparently substantial and conservative person, like defendant Von Neurath, for example, is saying these things, one might be apt to believe them, or at least, to act upon that hypothesis. And it would be the more impressive if one were also under the impression that the person involved was not a Nazi and would not stoop to go along with the designs of the Nazis.

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Germany's approach toward Great Britain and France was in terms of limited expansion as the price of peace. They signed a naval limitations treaty with England and discussed a Locarno Air Pact. In the case of both France and England, they limited their statement of intentions and harped on fears of Communism and war.

In making these various promises, Germany was untroubled by notions of the sanctity of international obligations. High ranking Nazis, including Goering, Frick and Frank, openly stated to Mr. Messersmith that Germany would observe her international undertakings only so long as it suited Germany interest to do so.

I quote from the affidavit, document number 2385-PS, page 4, beginning on the 10th line, page 4 of the English version:

"High ranking Nazis with whom I had to maintain official contact, particularly men such as Goering, Goebbels, Ley, Frick, Frank, Darre and others, repeatedly scoffed at my position as to the binding character of treaties and openly stated to me that Germany would observe her international undertakings only so long as it suited Germany's interest to do so. Although these statements were openly make to me as they were, I am sure, made to others, these Nazi leaders were not really disclosing any secret, for on many occasions they expressed the same ideas publicly."

France and Italy worked actively in South-eastern Europe to counter Germany's moves.

THE PRESIDENT: Would that be a convenient time to break off?

MR. ALDERMAN: Yes, sir.

THE PRESIDENT: Until 10:00 o'clock tomorrow morning.

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(Whereupon at 1640 hours the hearing of the Tribunal adjourned to reconvene on 29 November 1945, at 1000 hours)